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Nos. 84-550 and 84-867

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OCTOBER TERM, 1984

INTERSTATE COMMERCE COMMISSION,
Petitioner,

v.

BRAE CORPORATION, *et al.*,
Respondents.

CONSOLIDATED RAIL CORPORATION,
Petitioner,

v.

AHNAPEE & WESTERN RAILWAY COMPANY, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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QUESTIONS PRESENTED

1. Whether, in exempting railroad boxcar transportation from regulation, the Interstate Commerce Commission is free to ignore the language and the underlying Congressional purpose of recently enacted statutory joint rate and route provisions when finding that those provisions are not necessary to carry out the rail transportation policy.

2. Whether the Commission may lawfully use its exemption power to impose a new regulatory structure fixing, without regard to market conditions, the terms by which railroads compensate each other for the use of boxcars.

STATEMENT PURSUANT TO RULE 28.1

Because of its length, the list of affiliated companies, as required by Rule 28.1 of the Rules of this Court, is set forth as an Appendix, *infra*, pp. 1a-10a.

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT

In 1983, the Interstate Commerce Commission administratively exempted from most aspects of regulation the rail transportation of commodities in boxcars. It also adopted new rules restructuring the system by which one railroad compensates another for the use of the other's boxcar, the effect of which was to reduce the net "car hire" or "per diem" payments to which the owner is entitled.

The Court of Appeals affirmed the core of the Commission's order, upholding its sweeping exemption from maximum rate regulation. At the same time, the Court vacated the two other aspects of the Commission's order that are at issue here. First, the Court held that the agency had failed adequately to consider, in light of the Congressional policy embodied in the Staggers Rail Act of 1980, the impact of the exemption on joint rate and route relationships among railroads. Second, the Court held that the Commission's promulgation of a new car hire system for boxcars constituted affirmative regulation and therefore could not properly be justified solely as an exercise of the agency's exemption authority.

A. Regulatory Background

1. Most freight must move over the lines of more than one railroad to reach its destination. To maintain an integrated rail transportation system, the Interstate Commerce Act (the "Act") imposes on rail carriers the obligation to establish "through routes." 49 U.S.C. § 10703 (a) (1). The Commission has long interpreted that provision to require the free interchange of freight cars among connecting railroads. *See United States v. Pennsylvania Railroad*, 323 U.S. 612, 615, 619 (1945).

The through-route and mandatory-interchange requirements are the key to intramodal competition in the rail industry. As a result of railroad consolidations, several giant systems operating in different regions of the United States can now provide single-line service for most or all of a route. In most areas, regional and smaller railroads can serve a part but not all of a desired route. If through routes remain open at connecting gateways, regional railroads can offer shippers competitive joint-line routing and pricing alternatives to the larger carrier's single-line service.

Railroads that participate in through movements must have a mechanism for establishing joint-line freight rates.

The most common approach historically has been the "joint rate"—a single rate charged by two or more railroads together to carry a shipment over a through route. The participating carriers ordinarily agree on the "division" of revenues derived from a joint rate. As the Commission has recognized, "[j]oint rates simplify dealings with shippers and facilitate the ability of small railroads to compete with large ones." [1] As of 1980, it was estimated that "70 percent of the property transported by rail moves over through routes subject to joint rates." H.R. Rep. No. 1035, 96th Cong., 2d Sess. 41 (1980).

As a practical matter, cancellation of a joint rate ordinarily diverts freight to the larger carrier's competing single-line route and leads to atrophy of the through route. "Combination rates"—under which each carrier sets and collects a separate rate applicable to its segment of a through movement—are a theoretical alternative to joint rates. The sum of such combination rates, however, "will almost certainly exceed the joint rate that they replace." *Chesapeake & Ohio Railway v. United States*, 704 F.2d 373, 376 (7th Cir. 1983). "Although the Commission would not acknowledge that the effect of cancelling a joint rate is to 'close' the through route, the whole point of cancellation is to divert traffic to an alternative route, and diversion implies 'closure'—whether total or partial is a detail." *Id.*

The Act directs the Commission, when the public interest requires, to prescribe joint rates and the division of revenues among participating carriers. 49 U.S.C. § 10705(a)(1). Until 1980, a carrier participating in a joint rate could not unilaterally cancel the rate or alter the divisions formula without the Commission's approval under a public interest standard. 49 U.S.C. § 10705(e).

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[1] Ex Parte No. 427, *Joint Rates Study: A Report to Congress Pursuant to Section 217 of the Staggers Rail Act of 1980*, slip op. at 2 (Nov. 12, 1982).

In the Staggers Rail Act of 1980, Congress relaxed the restrictions on unilateral joint rate actions while preserving essential protections for smaller railroads. 49 U.S.C. § 10705a. That approach represented a major legislative compromise and reflects a painstaking balance between sharply competing interests—on the one hand, the need to provide flexibility for the adjustment of uneconomic rate relationships; on the other hand, the need to permit smaller carriers to remain a vital competitive force in the rail industry.

2. Under the system of mandatory interchange, the Nation's freight cars, while individually owned, are considered a single common pool to be used by all railroads. *See United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 743 (1972). Of course, those who use freight cars owned by others must fairly compensate the owners. The Act authorizes the Commission to prescribe the applicable "car hire" or "per diem" rate for each type of freight car. 49 U.S.C. § 11122(a)(1). It specifies that the compensation rate must be determined by the cost of ownership, including a fair return on investment. 49 U.S.C. § 11122(b).

Throughout most of this century, per diem rates have been too low to produce a sufficient supply of freight cars, and the national rail system has been plagued by chronic boxcar shortages. *See United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. at 744-46. Congress initially sought to stimulate supply by authorizing the Commission to include incentive elements in the per diem rate. 49 U.S.C. § 1(14)(a) (1976 ed.). The incentive per diem rates, however, created additional distortions, and, in the Staggers Act, Congress withdrew the agency's authority to include such elements, while reiterating that the basic per diem rate "should be sufficient to pay an adequate return on investment." H.R. Conf. Rep. No. 1430, 96th Cong., 2d Sess. 117 (1980).

3. The exemption provision at issue here, originally enacted in 1976, was amended as part of the Staggers Act. It authorizes the Commission to grant an exemption from "the application of a provision" if it finds (1) that the provision "is not necessary to carry out the transportation policy of section 10101a" and (2) either that the transaction or service involved is of "limited scope" or that the statutory provision "is not needed to protect shippers from the abuse of market power." 49 U.S.C. § 10505(a).

The Commission may use its exemption power to remove regulation "consistent with the policies of Congress." H.R. Conf. Rep. No. 1430, *supra*, at 105 (1980). Those policies, which are enumerated in general terms in section 10101a, include "allowing rail carriers to earn adequate revenues," developing and preserving "a sound rail transportation system with effective competition among rail carriers," ensuring "effective competition and coordination between rail carriers," and preventing predatory practices and undue concentrations of market power. 49 U.S.C. § 10101a(3), (4), (5), (13). These broad statements of policy are particularized in the various substantive provisions enacted concurrently with section 10101a.

B. Proceedings Before the Commission

Petitioner Consolidated Rail Corporation ("Conrail") began this case in May 1981 when it filed a petition asking the ICC to exempt from regulation the transportation of all commodities moving in boxcars to, from, or on Conrail's lines. Following public notice, and in the face of overwhelming opposition from every segment of the transportation community, Conrail modified the car hire aspects of its proposal. Instead of a complete exemption from interchange and per diem obligations, Conrail sought new rights (1) to charge boxcar owners up to 35 cents per mile whenever empty boxcars are returned to them at their request, and (2) to store others' empty cars and

offset or "reclaim" all car hire beginning three days after a car is unloaded. Conrail also asked the Commission to confirm that carriers could enter into bilateral agreements concerning per diem rates, empty movements, and storage.

After further public comment, most of which opposed the new scheme, the Commission decided over the dissent of Chairman Taylor, to "exempt[] boxcar service from regulation to the extent described in Conrail's modified proposal" and to apply the exemption to "all railroads." Pet. App. 106a. The Commission majority accepted Conrail's "fundamental premise" that "truck competition for the transportation of boxcar commodities is pervasive and limits the railroads' pricing freedom." *Id.* at 113a.

Notwithstanding the concerns of smaller railroads that they would be vulnerable to harmful joint rate surcharges and cancellations, and the concerns of shippers that such rate and route cancellations would deprive them of access to competitive routing alternatives, the Commission altogether exempted joint rate and through route relationships from its regulatory oversight. *Id.* at 123a-124a. It did not discuss or refer to the extensive legislative history behind the Staggers Act's joint rate protections for smaller railroads.

The Commission acknowledged that the new car hire rules would have "some effect on the levels of net compensation received by carowners" and that "[s]hort-line railroads . . . may have good cause to be concerned about the near term effects of the proposal." *Id.* at 131a, 132a. The Commission described the adverse financial impact on smaller railroads and car suppliers as "unfortunate," but it did "not see this as contrary to any of the pertinent considerations under section 10505." *Id.* at 134a.

While the Commission characterized its new car hire system as "a partial exemption from regulation subject to conditions," it acknowledged that its action "could be con-

strued in some respects as being new regulation." *Id.* at 136a. It therefore stated: "To allay any doubt about the sufficiency of section 10505(a) as authority for our approval of Conrail's modified proposal, we shall take this action also under section 11122," the statutory section governing the Commission's car compensation rules. *Id.*

Although the Commission received more than 70 petitions for reconsideration and stay, it nonetheless reaffirmed its order in all respects save one. It withdrew "any reliance on section 11122 as authority for [its] approval of [Conrail's modified] proposal," thereby resting the new regulations exclusively on its section 10505 exemption power. *Id.* at 167a. By its own admission, the Commission took that action to sidestep the "substantial legal questions" raised by its failure to refer to section 11122 in its notices of proposed rulemaking. *Id.*[2]

C. Court of Appeals Decision

The Court of Appeals reviewed the Commission's decision under the standards set forth in *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. 2856 (1983). Pet. App. 24a-26a. It "focuse[d] on the reasoned nature of the Commission's decision, taking into account the nature of that decision and of the components that can be reasonably expected to go into it." *Id.* at 26a. The Court of Appeals relaxed the usual requirements, however, in view of the Staggers Act's broadening of the Commission's exemption power. "Given that explicit congressional mandate, we do not believe the Commission need as exhaustively review and explain away its original justifications for aban-

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[2] The Commission put its decision into effect on January 1, 1984, but postponed—initially until July 1, 1984, and subsequently until July 1, 1985—implementation of the new car hire provisions as applied to "Class III" railroads—those with less than $10 million in annual revenues.

doned regulations as if it were operating under the same statute it always had." *Id.* at 25a.

1. The Court concluded that "the Commission's general exemption of boxcar freight rates from regulation was amply reasoned and supported by the record." *Id.* at 91a-92a. Employing "the same broad lens for review," however, the Court concluded that the Commission's decision with respect to joint rates and routes was "not supported by adequate consideration of relevant factors." *Id.* at 50a. The Court determined that the Staggers Act's legislative history concerning the relationship between the exemption provision (§ 10505), the rail transportation policy (§ 10101a), and the newly enacted joint rate and route provisions (§ 10705a) "clearly demonstrates that Congress anticipated that the ICC would engage in a far broader and more thorough inquiry into the need for continued joint rate regulation before granting a total and unconditioned exemption of joint rates from any oversight or regulation." *Id.* at 42a.

The Court identified two pivotal gaps in the Commission's reasoning. First, long-haul carriers often participate with smaller carriers in joint-line routes that compete directly with the long-haul carrier's single-line route between the same points. Congress had recognized the danger of anticompetitive rate or route cancellations in such circumstances and had included protections against such actions in section 10705a. *See* Pet. App. 43a. Without any consideration of the Congressional policy, however, the Commission "simply dismissed . . . as unlikely" the possibility that large carriers would cancel efficient joint-line routes with smaller carriers. *Id.* That assumption seemed inconsistent with other statements in the Commission's decision, *id.* at 42a-43a, and it was directly contradicted by the Commission's own analysis in a related proceeding. The Court accordingly concluded that the Commission "fail[ed] to adequately explain its crucial assertion that large long-haul carriers will not

close off efficient routes of small short-haul carriers." *Id.* at 42a.

Second, many shortline originating or terminating carriers connect only with a single trunkline railroad and are therefore wholly dependent on the larger carrier for their ability to move traffic beyond their own lines. Congress had recognized in the Staggers Act the inherent danger that a trunkline carrier, by manipulating the division of joint rates or otherwise, might appropriate to itself all the profits from a through movement with a shortline railroad. It included specific protections against that result in section 10705a, as a manifestation of its policies in section 10101a favoring adequate revenues for carriers and prohibiting predatory practices. The Court concluded that the Commission's "total failure to address this highlighted issue renders inadequate its finding that small carriers will be protected in the absence of regulation." Pet. App. 47a. "The Commission's response that large carriers have no incentive in the short run to drive more efficient small carriers out of business simply fails to address Congress' concerns that rail carriers receive enough revenue to pay for efficiency increasing improvements and to encourage further investment to keep the rail system healthy." *Id.* at 46a.

In remanding the joint rates portion of the Commission's order, the Court made clear that the Commission would have ample latitude to proceed as it deems appropriate. The basis of the remand "was the failure of the Commission to explain adequately the likely effect of deregulation of joint rates on rate divisions." *Id.* at 100a. The Commission is therefore free either to "reevaluate[] its exemption of joint rates in light of our holding today" or to issue new rules that are consistent with that holding. *Id.* at 92a. "Our task is solely to insure that it provides adequate justification for whatever it does." *Id.* at 101a.

2. The Court of Appeals also vacated the car hire portion of the Commission's order, on the ground that it was "a promulgation of a substantive rule, and not an exemption authorized by 49 U.S.C. § 10505(a)." *Id.* at 93a. The Court's holding rests on two conclusions.

First, "the Commission's power under section 10505(a) is limited to the power to deregulate; to remove regulatory burdens and to allow the marketplace to influence decisions in the rail industry." *Id.* at 59a. Second, "the Commission here was *not* deregulating, but rather was imposing a new regulatory framework over the car hire relationship." *Id.* at 60a (emphasis in original). The new rules, "rather than leaving the contours of the car hire relationship to the market" (*id.* at 61a), "dictated a substantial component of the initial economic relationship that will exist as the parties enter negotiations, regardless of the alignment of any other market factors." *Id.* at 62a. Injecting "measures into the marketplace to induce a particular desired response"—"[d]eciding which party should bear the cost of moving empty boxcars, regardless of market factors"—"can hardly be characterized as deregulation." *Id.* at 64a.

The Court emphasized that the Commission could consider adopting the same rules under the standards of 49 U.S.C. § 11122, which empowers the agency to promulgate car hire regulations. *Id.* at 65a. Alternatively, it could "exempt compliance with section 11122," if the result were truly deregulation rather than new regulation. *Id.* at 69a. Finally, the Commission could properly adopt a partial exemption; it "need not deregulate at one fell swoop." *Id.* at 57a. "What it cannot do," according to the Court, "is end run rule-making procedures by labeling a new reguiatory structure as an exemption." *Id.* at 69a.

ARGUMENT

The decision of the Court of Appeals is correct; it conflicts with no decision of this Court or any other Court of Appeals; and it will not interfere with the Commission's execution of its statutory responsibilities. Further review is therefore unwarranted.

I. The Commission Failed Adequately to Consider the Congressional Policies on Joint Rate and Route Regulation

A. The Court of Appeals' decision is founded on two holdings: (1) that the Congressional policies on joint rates and routes, fashioned contemporaneously with enactment of the broadened exemption power and the rail transportation policy, were a relevant factor to be considered by the agency; and (2) that the Commission failed adequately to consider those policies. A brief review of the Staggers Act's joint rates compromise is necessary to place those holdings in proper perspective.

Before 1980, it had been difficult for a railroad to adjust or escape from a joint rate relationship even if it was unprofitable. The carrier could not unilaterally cancel a joint rate, change the rate level, or alter the division of revenues without the approval, under 49 U.S.C. § 10705(e), of a traditionally unsympathetic ICC. Furthermore, during the pre-Staggers Act period, the Commission made "consistent use of its discretionary powers" to order " 'the routine suspension of proposed joint rate cancellations . . . until a final decision could be reached on the merits.' " *Southern Railway Co. v. ICC*, 681 F.2d 29, 34 (D.C. Cir. 1982).

The Carter Administration attempted to respond to this problem in drafting the Railroad Transportation Act of 1979 (the forerunner of the Staggers Act). It "proposed to continue the [ICC's] through-route authority but to eliminate the Commission's authority with regard to joint rates." S. Rep. No. 470, 96th Cong., 1st Sess. 12

(1979). Administration spokesmen argued (just as petitioners here argue) that continued joint rate regulation was not needed to protect smaller carriers, because the long-haul carriers "will not act so imprudently as to drive profitable traffic away." [3] In the Administration's view, "discrimination against short-line" carriers would not "be a serious, or pervasive, problem," because the trunkline carriers "have an economic interest in working" with their smaller connections.[4]

The House and Senate hearings on the bill generated "considerable testimony and total opposition to the administration's proposal" to deregulate joint rates.[5] The testimony focused on two problems. First, feeder lines—originating or terminating carriers that connect only with a single trunkline carrier—were concerned that their larger connecting railroads would be free, under the Administration's proposal, to extract all the profits out of joint movements, a result that would harm both the feeder lines and the shippers dependent upon them.[6]

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[3] Railroad Deregulation Act of 1979: Hearings Before Subcomm. on Surface Transportation of Senate Comm. on Commerce, Science, and Transportation, 96th Cong., 1st Sess. 254 (1979) (statement of Robert E. Gallamore, Deputy Administrator, Federal Railroad Administration, Department of Transportation).

[4] *Id.* at 276. *See also* Rail Act of 1980: Hearings Before Subcomm. on Transportation and Commerce of House Comm. on Interstate and Foreign Commerce, 96th Cong., 2d Sess. 315 (1980) (statement of Darius Gaskins, Chairman, Interstate Commerce Commission) ["*1980 House Hearings*"].

[5] 125 Cong. Rec. S 29,958 (October 29, 1979) (statement of Sen. Cannon); *accord* S. Rep. No. 470, 96th Cong., 1st Sess. 12 (1979).

[6] For example, the President of the American Short Line Railroad Association explained:

> Whereas a major railroad will usually have a number of available routes and gateways, that is not generally the case with a short line. It has one partner and one partner only; if that partner imposes a surcharge on its traffic, there is no way it can be avoided . . . . A commodity that is the life blood of a

Second, smaller regional railroads feared that their larger joint-line partners would be free, in the absence of regulatory oversight, to cancel or manipulate the joint rate to divert traffic to the larger carrier's competing single-line route.[7] In response to these concerns, Representative Florio, chairman of the presiding subcommittee and a key architect of the Staggers Act, explained that protection for smaller railroads was of paramount importance: "The Committee is very concerned that small carriers not be put in a position where they are at the mercy of large connecting carriers. Whatever the resolution of the joint rate problem, smaller carriers must be protected. . . . [A] delicate balance . . . must be struck." [8]

After extensive debate, which at times jeopardized passage of the entire bill, Congress struck that "delicate balance." The compromise, enacted as 49 U.S.C. § 10705a, had two elements. On the one hand, the provision relieved railroads from non-compensatory or marginally compensatory joint rate arrangements. It allowed a carrier, unilaterally and without ICC approval, to cancel or impose a surcharge on a joint rate if its revenues from the movement were less than 110 percent of its variable costs.

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short line may be totally insignificant to a major road that has a large mix of traffic and an equally large number of shippers.

1980 House Hearings at 510 (statement of Howard Croft).

[7] For example, the President of the Association of American Railroads testified that one of the "major difficulties" of the Administration's proposal, and "a matter of great concern to many railroads," was that "a carrier might cancel the joint rate and establish its own local rate for its part of the through movement at a level that would drive traffic to that carrier's own single-line routes between the points in question. This is a form of abuse of monopoly power." Railroad Deregulation Act of 1979: Hearings Before Subcomm. on Transportation and Commerce of House Comm. on Interstate and Foreign Commerce, 96th Cong., 1st Sess. 124 (statement of William H. Dempsey) [*"1979 House Hearings"*].

[8] *1979 House Hearings* at 325.

On the other hand, the provision gave smaller railroads special protections designed to deal with both of the major problems identified during hearings on the bill. To protect shortline feeder carriers, the statute authorized the ICC to reduce a carrier-imposed surcharge or to prescribe a different joint rate division if a Class III originating or terminating railroad could show that its return would otherwise be inadequate or that a shipper on its line would suffer a significant market loss. § 10705a(j). To protect against anticompetitive joint rate actions by long-haul carriers favoring their competing single-line routes, the statute directed the ICC to rescind any cancellation or surcharge within 30 days if a Class III railroad could show that the cancellation or surcharge would adversely affect competition. § 10705a(i). The compromise also required the Commission, on petition by a small railroad, to prescribe a new compensatory rate to replace a cancelled joint rate. § 10705a(*l*).

The architect of the compromise was Representative Lee, and the provision is known as the "Lee Amendment." When the amendment was introduced on the floor, Representative Lee explained its purposes at some length. The provisions were intended, he stated, to "preserv[e] short line railroads as effective competitors," "to promote development of class II and class III carriers," and "to insur[e] that the new regulatory freedoms will not be used to stifle the development of our smaller class II and class III carriers which are an important element, and a growing element, in the national rail network." [9] Those who hammered out the compromise were particularly mindful of the ICC's broadened exemption power. Although there was no need to prohibit all joint rate exemptions, Representative Lee unequivocally expressed the intent of the framers that the Commission should not use its exemption authority in a way that would undercut the policy reflected in the joint rates compromise. He stated:

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[9] 126 Cong. Rec. H 24,828 (September 9, 1980).

> In this bill we broaden the exemption clause creating a simpler standard. In no case should the exemption clause be allowed in a circumstance that would allow a large carrier to utilize its market power to squeeze a smaller carrier on a joint rate or division or to force a de facto cancellation. *In other words the exemption clause should never be used to "end run" the joint rate provisions contained in section [10705a].*[10]

The policies of the Lee Amendment find expression in several elements of the rail transportation policy of section 10101a: promoting an efficient rail transportation system with adequate revenues for carriers, ensuring effective intramodal competition and coordination, and preventing predatory practices and undue concentration of market power. 49 U.S.C. § 10101a(1), (3), (4), (5), (10), (13). When the Commission considers, under its exemption authority, whether the joint rate and route provisions of the statute are needed to carry out the rail transportation policy, can there be any doubt that one relevant factor in that determination is the underlying legislative purpose of those provisions? Where Congress has so recently visited and so extensively debated the subject, and where the resulting legislation embodies such a carefully constructed compromise, it is inconceivable that the agency would be entitled to ignore the policy of that compromise when it considers granting an exemption from it.

We do not argue, and the Court of Appeals did not hold, that the Commission can never exempt carriers from the joint rate and route provisions. Our point, with which the Court of Appeals agreed, is only that the Commission must consider, when the issue is properly raised, whether such an exemption would conflict with the language and intention of the Lee Amendment—whether, in other words, the effect would be to end-run the legislative compromise.

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[10] *Id.* (emphasis added).

Nothing in the comments of Representatives Madigan and Staggers, cited by petitioners (Conrail Pet. 7; U.S. Br. 20), contradicts Representative Lee's statement that the exemption power should not be used to vitiate the policies embodied in the joint rates compromise. On the contrary, Representative Madigan strongly endorsed the objectives of the Lee Amendment. He stated: "One of the major purposes of this bill is to encourage the development of short line and feeder line railroads. Therefore we were particularly careful not to do anything which would cause economic hardship to existing short line railroads." [11]

B. Petitioners' response comes in four waves.

First, they belittle Representative Lee's remarks. Conrail Pet. 18-19 & n.30; U.S. Br. 20. But the Commission itself has recognized elsewhere that the Lee Amendment embodies a strong Congressional policy that is entitled to "significant weight" in the agency's consideration of joint rate issues, even under other sections of the statute. *Restructured Rates on Recyclables—Conrail*, 365 I.C.C. 596, 614 (1982). Both the Commission and the courts have correctly treated Representative Lee's comments, not as a token of one legislator's "hope" (U.S. Br. 20) that the agency would honor the joint rates accommodation, but as an authoritative expression of the Congressional purpose. *E.g.*, Ex Parte No. 427, *Joint Rates Study*, *supra*, at 10-15; *Minneapolis, Northfield & Southern Railway v. ICC*, 707 F.2d 984, 988 (8th Cir. 1983).

Second, petitioners argue that the Lee Amendment and its underlying legislative policy are irrelevant. The Commission, they say, need look only as far as the bare words of section 10101a; it has no obligation to consider why Congress thought the Lee Amendment was necessary to carry out the policies expressed by those words. Conrail

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[11] 126 Cong. Rec. H 17,789 (June 30, 1980).

Pet. 18-20; U.S. Br. 18-20. But the Congress that adopted the Lee Amendment is the same Congress that enacted the exemption clause. Indeed, both provisions are part of the same enactment. The only relevant legislative history suggests strongly that the Commission must at least look at the policies of the Lee Amendment before abrogating its protections. That conclusion requires no departure from the statutory language. As the Court of Appeals correctly reasoned, the section 10101a policies are not isolated abstractions; they are anchored in and illuminated by the policies of the Lee Amendment. Pet. App. 42a, 45a-49a.

Under petitioners' sterile approach, the Commission would be free to ignore the purposes of a provision from which it was granting an exemption. It could lawfully remove from the books a recently enacted provision without even bothering to ask why Congress put it there in the first place. Congress could not have intended to clothe the agency with the power to negate legislative policy without even considering what that policy is.

Third, petitioners recast the Court's decision and attack a straw man of their own making. They assert that the Court injected into the rail transportation policy a new element—"fair divisions"—that is not set forth in section 10101a. Conrail Pet. 13-14, 17-20; U.S. Br. 18-21. But only the most inhospitable reading of the Court's opinion could support such an assertion. The Court's analysis focused precisely on the policies set forth in section 10101a. Its discussion of joint rate divisions, like its discussion of anticompetitive route closings, was intended, not to add new elements to the transportation policy, but to give relevant content to the elements already there. It held, not that the Commission must guarantee fair divisions (*see* U.S. Br. 13), but only that the agency must "explain adequately the likely effect of deregulation of joint rates on rate divisions" (Pet. App. 100a)—in other words, that it must reckon with the

unequivocal Congressional policy favoring protection of smaller railroads against rate squeezes by their larger connecting carriers.

Fourth, without suggesting that the Commission considered or even mentioned the Lee Amendment's purposes, petitioners seek to excuse that deficiency by arguing that the agency nevertheless adequately addressed the exemption's impact on smaller railroads. ICC Pet. 7-14; Conrail Pet. 15-17, 20; U.S. Br. 16 n.9, 21-23. To the extent it addressed the cancellation and divisions issues at all, however, the Commission reached conclusions directly contrary to those of Congress. Since the Commission paid no attention to the legislative history, that result is hardly surprising. This is an instance, therefore, not of a court second-guessing an agency's economics, but of an agency, perhaps inadvertently, second-guessing the judgment of Congress.

According to petitioners, for example, the Commission found that "large long-haul carriers will not close efficient routes in which they participate in connection with small short-haul carriers," because such "cancellations [would be] . . . directly contrary to their self-interest." ICC Pet. 8. The Commission's assertion to that effect, as the Court of Appeals noted, was "crucial" to its conclusion that regulation was not needed to protect against such cancellations. Pet. App. 42a. But it was also the same economic theory that the Carter Administration advanced and that Congress rejected in enacting the Staggers Act. See pp. 11-12, *supra*. The Commission made no effort to reconcile its judgment with the conflicting Congressional determination, nor did it even seem aware of the divergence.

Moreover, in an earlier decision in which it had treated the cancellation issue far more thoroughly, the Commission had reached the opposite conclusion. It found there that, because of the peculiarities of railroad economics, a long-haul carrier *will* have a financial incentive in

many situations to prefer its own less efficient single-line route over a more efficient joint-line route. *Traffic Protective Conditions*, 366 I.C.C. 112, 125-26 (1982), *rev'd on other grounds*, 725 F.2d 47 (6th Cir. 1984.) In contrast to its exemption decision in this case, the Commission there emphasized that its removal of certain regulatory safeguards would "not leave an interchange partner completely unprotected." *Id.* at 126. "Where carriers route traffic over a more circuitous single-line route in order to preserve their long haul, statutory protections (*i.e.*, sections 10705 and 10705a] are available to protect efficient joint-line routes." *Id.* By its action here, the Commission nullified those very protections as to boxcar traffic, with no apparent awareness that it had made contradictory findings in its *Traffic Protective Conditions* decision.[12]

These are serious holes in the Commission's reasoning. They cannot be plugged with facile *post hoc* rationalizations. Counsel for the United States may believe that the Congressional judgment in the Staggers Act can be ignored because it did not deal with "*competitive* transportation services" (U.S. Br. 20; emphasis in original), or that the *Traffic Protective Conditions* analysis can be explained away on the ground that any "efficiency loss" from the cancellation of a more efficient joint-line route "would be outweighed by the benefits of the exemption in the ordinary case." U.S. Br. at 23 n.11. But these

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[12] This aspect of the Commission's analysis in *Traffic Protective Conditions* is supported by recent economic and legal analysis. In Carlton & Klamer, *The Need for Coordination Among Firms, With Special Reference to Network Industries*, 50 U. Chi. L. Rev. 446, 451-53 (1983), the authors explain that, in the railroad industry, "prices must exceed marginal costs if firms are to break even, because firms must build and maintain costly networks." *Id.* at 451. "Wherever price exceeds the marginal cost of using a link in the network, each firm will have an incentive to try to obtain traffic . . . over its link to gain revenue, regardless of whether the result is inefficient overall routing." *Id.* at 452.

are not the Commission's reasons; the Commission has not spoken. *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. at 2870.

The Commission's consideration of the divisions issue was equally deficient. It asserted that "neither carrier will insist on a division of profits so disproportionate as to force the other to withdraw from the movement to avoid a loss and thus to forfeit the traffic for both carriers." Pet. App. 124a. But Congress reached a different judgment. It concluded that shortline carriers and their shipper customers might be injured as a result of joint-rate actions by long-haul connecting carriers, and it provided an appropriate remedy. 49 U.S.C. § 10705a(j). The Commission made no effort to square its conclusion with that of Congress. Nor did the agency deny that a larger railroad would be free under the exemption to extract every ounce of profit from joint rate traffic save what is barely needed to keep the feeder railroad in the movement. But that is precisely the sort of rate "squeeze" to which Congress did not wish the shortline railroads to be subjected.[13]

C. The decision below does not conflict, even in "approach" (U.S. Br. 24), with the Fifth Circuit's decision

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[13] Petitioners argue that "[i]t is logically inconsistent for the court to find . . . that railroads do not have monopoly power vis-a-vis shippers and at the same time conclude . . . that individual carriers may be able to extract economic 'rents' from a movement by exploiting their connections." ICC Pet. 13; *see also* Conrail Pet. 17-18 n.26; U.S. Br. 23. As the Court of Appeals correctly explained, however, upholding the Commission's finding that railroads do not have "undue monopoly power" does not imply that "rail transportation operates in a perfectly competitive market where all railroads' costs (including reasonable returns on capital) equal their revenues." Pet. App. 44a-45a n.1. "In other words, the finding of no monopoly power vis-a-vis shippers does not, as the Commission itself reasoned, mean that railroads generally are not in a position to reap and divide among themselves the rewards of their operating efficiencies where such efficiencies exist." *Id.*

in the "piggyback" case, *American Trucking Associations v. ICC*, 656 F.2d 1115 (5th Cir. 1981). The Court there affirmed in substantial part an ICC exemption for rail transportation in trailer-on-flatcar and container-on-flatcar ("TOFC/COFC") service. No question was raised concerning the Congressional policy on joint rates and routes, and the Court of Appeals had no occasion to consider it.

More important, as the Fifth Circuit noted, Congress in section 10505(f) "specifically authorized the Commission to exempt TOFC/COFC rail service." *Id.* at 1126. "While section 10505(f) does not absolve the Commission from the need to make the section 10505(a) findings, it does indicate plainly that Congress felt that TOFC/COFC service was an appropriate subject for the exercise of the Commission's section 10505(a) exemption authority." *Id.* Congress made no similar determination with respect to boxcar service.

D. Petitioners assert that the Court of Appeals' decision will impair the Commission's implementation of its exemption authority. ICC Pet. 5-6; Conrail Pet. 13-14; U.S. Br. 25-26. But those claims rest on petitioners' mistaken view that the Court has "engraft[ed] an additional substantive requirement on the Commission's exemption authority." U.S. Br. 13. Only petitioners' bloated interpretation of the Court's decision, not the decision itself, fits that description. The Court did only what it said it was doing—it insisted on "adequate consideration of relevant factors," leaving the Commission free on remand to take any action it wishes so long as "it provides adequate justification for whatever it does." Pet. App. 50a, 101a. Requiring the Commission to consider adequately Congressional policies that lie at the heart of a proposed exemption is a means of enforcing, not obstructing, the Congressional will.

II. The Car Hire Rules Are New Regulation, Not An Exemption From Regulation

The Court of Appeals held (1) that 49 U.S.C. § 10505 empowers the Commission to deregulate, not reregulate, and (2) that the new car hire rules were in fact reregulation, not deregulation. Pet. App. 56a-65a.

Only Conrail disputes the first holding, which it portrays as precluding "partial exemptions that achieve only limited deregulation." Conrail Pet. 22. But the Court of Appeals specifically confirmed that the Commission may grant "either partial or complete exemptions" and "need not deregulate at one fell swoop." Pet. App. 56a-57a. The Court held only that any such partial exemption must lead to "*decreased* regulation," not to increased or reformulated regulation. *Id.* at 57a (emphasis in original).

Petitioners' major disagreement is with the Court's application of that standard to the Commission's new car hire scheme. But whether a system of empty return charges and storage reclaim fees constitutes a rule or an exemption, whether it deregulates or reregulates, does not require the attention of this Court. The issue is bound up tightly with the complexities of freight car compensation, and no similar issue is likely to arise in the future. Moreover, the Court's resolution of the question is of minimal practical consequence. The Commission has been left free on remand to consider adopting the same rules under the substantive authority of 49 U.S.C. § 11122 and to consider other options, including an exemption from the requirements of that section. Pet. App. 65a, 69a. In fact, the agency instituted a proceeding in June 1984, even before the Court of Appeals' decision, precisely to consider such proposals,[14] and the outcome of that consideration may well moot the issues

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[14] Ex Parte No. 346 (Sub-No. 19), *Boxcar Car Hire and Car Service*, 49 Fed. Reg. 27,333 (July 3, 1984).

in this case. As the United States has accordingly acknowledged, the car hire issues do not independently warrant review by this Court. U.S. Br. 26 n.14.

In any event, the Court of Appeals reached the correct result. Even the Commission has taken both sides of the issue—first acknowledging that the modified car hire regime could be characterized as "new regulation," then retreating to its current position solely for procedural reasons. Pet. App. 134a, 167a. It was right the first time.

The question must be viewed in the context of 49 U.S.C. § 11122, which authorizes the Commission to regulate freight car compensation and provides that "[t]he rate of compensation . . . *shall* be determined by the expense of owning and maintaining [each] type of freight car, including a fair return on its cost" (emphasis added). The Commission had earlier prescribed car hire rates for boxcars in accordance with that standard.[15] It conceded here that its new car hire rules would effectively reduce the net rate of compensation to which boxcar owners would be entitled. Pet. App. 131a. It made no finding, however, that the new compensation rate would satisfy the fair return standard of section 11122. In effect, the Commission put in place a new system of car compensation without regard to the Congressionally imposed requirements for approving such a system.

The argument that its exemption power permits the Commission to disregard those requirements gives life to the Court of Appeals' statement that the Commission seeks "carte blanche to rewrite the Interstate Commerce Act under the umbrella of its exemption powers." Pet. App. 59a. If petitioners' reading of the exemption clause were right, "the Commission could invoke section 10505(a)

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[15] *Car Service Compensation—Basic Per Diem Charges*, 358 I.C.C. 715 (1977), *revised at* 361 I.C.C. 189 (1979) and 362 I.C.C. 884 (1980).

as the authority both for exempting a section and then for re-regulating the industry under a completely different format," without making any of the findings required by section 11122 for new regulation. *Id.* at 59a-60a. To confer such power on the agency would be particularly dangerous in light of petitioners' assertions that the Commission need not even provide notice and an opportunity for public comment before adopting an exemption. ICC Pet. 4; U.S. Br. 4.

The United States would allow the Commission to take virtually any action under its exemption power—including the imposition of new regulatory burdens and the reassignment of regulatory benefits—so long as the "direction" of the change is "an increase in the degree to which market forces determine the deployment of resources." U.S. Br. 28. But the United States cites no evidence in the statute or the legislative history to suggest that Congress intended the exemption power to be used to impose fresh regulatory burdens. As the Court of Appeals correctly concluded, the legislative history points sharply in the other direction. Pet. App. 57a-59a.

In any event, applying the "market forces" standard suggested by the United States would not change the result here. As the Court of Appeals properly found, "[i]nstead of allowing the market to determine the relationship between 'suppliers' and 'purchasers', the Commission embraced a system under which certain vital segments of that relationship were fixed and predetermined, *regardless of market forces.*" Pet. App. 64a-65a (emphasis in original). "[R]ather than leaving the contours of the car hire relationship to the market," as the United States contends the agency did, "the Commission skewed the initial economic relationship in favor of the destination carrier." *Id.* at 61a.

There is no merit to the claim that the Court has "foreclos[ed] the Commission from using the exemption power to permit market forces rather than regulation to allo-

cate boxcar resources." ICC Pet. 17. The Court specifically stated that the exemption power *could* properly be used "to remove regulatory burdens and to allow the marketplace to influence decisions in the rail industry." Pet. App. 59a.

The Commission's car hire rules cannot be saved by arguing that they are intended merely "to create an incentive to reach [bilateral] agreements." U.S. Br. 8; *see also* Conrail Pet. 10. As the Court of Appeals correctly concluded, the promulgation of a new regulatory system "does not metamorphize into a deregulatory exemption simply because it may encourage some carriers to enter bilateral agreements that will dictate the terms for the use, storage, and return of boxcars." Pet. App. 62a. Nor would otherwise unlawful car hire rules become a lawful exemption merely because they might be "circumvented" by some carriers through adjustments in their freight rates. ICC Pet. 16; *see also* Conrail Pet. 21-22 n.33.

Finally, this Court's decisions upholding the Commission's power to attach conditions to its approval of tariffs are of no help to petitioners here. It is one thing to permit an agency, in the face of a regulatory gap, to "elaborate upon its express statutory remedies when necessary to achieve specific statutory goals." *ICC v. American Trucking Associations*, 104 S. Ct. 2458, 2465 (1984). It would be quite another thing to uphold, as an adjunct of the Commission's exemption power, the use of a "condition" that imposes new regulations without regard to the applicable express statutory standards. As the Court of Appeals correctly held, the Commission may not, merely by calling its action a conditioned exemption, use "its deregulatory powers as a means to achieve a new regulatory format." Pet. App. 67a-68a.

III. Review of This Case Is Not Warranted Regardless of the Court's Disposition of the Export Coal Case

The Court has before it petitions for review of a decision by another panel of the District of Columbia Circuit involving the ICC's "export coal" exemption. *Coal*

Exporters Association v. United States, 745 F.2d 76 (D.C. Cir. 1984), *petitions for cert. pending*, Nos. 84-884, 84-885. The United States sees similarities in the cases. U.S. Br. 12-13. Any resemblance, however, is superficial; the cases are both factually and analytically distinct. Regardless of the Court's disposition of the export coal petitions, review of the present case is not warranted.

First, the cases involve different arms of the exemption clause. The focus of the export coal case is on the "abuse of market power" standard, and the issue is whether the exemption would allow railroads to charge shippers unreasonably high rates. In this case, by contrast, the focus is on the "rail transportation policy" standard. The "abuse of market power" and rate reasonableness issues in this case were resolved by the Court of Appeals in the Commission's favor. No party has sought review of that portion of the Court's judgment, and those issues are therefore not before this Court.

Second, the Court of Appeals in the export coal case held that the Commission's balancing of the competing Congressional policies had resulted in "a wholly unreasonable construction of the Staggers Act's accommodation between shipper and carrier interests." 745 F.2d at 95. Here, by contrast, the Court of Appeals held that the Commission failed even to consider whether there *were* competing Congressional policies. The error in export coal, according to the Court, was the agency's interpretation of the Congressional intent. The error here was the Commission's inattention to the Congressional intent. As the Court of Appeals stated, this was a breakdown in "reasoned decisionmaking," Pet. App. 43a, the Commission having "entirely failed to consider an important aspect of the problem." *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 103 S. Ct. at 2867. That decisional breach will remain regardless of how this Court disposes of the export coal case.

Third, there is no dispute that the issues presented by the car hire rules adopted by the Commission and vacated

by the Court of Appeals are unique to this case and have not been involved in any other exemption decision of the Commission, including its export coal decision.

Therefore, certiorari should not be granted to review the decision below, regardless of the Court's disposition of the petitions for review in the export coal case.

CONCLUSION

The petitions for a writ of certiorari should be denied.

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APPENDIX

APPENDIX

Pursuant to Rule 28.1 of the Rules of this Court, the following list identifies all parent companies, subsidiaries (except wholly owned subsidiaries), and affiliates of each corporate party on whose behalf this brief is filed.

BRAE Corporation *
- Air Momentum, Inc.
- American Sign & Indicator Corp.
  - Canadian Sign & Indicator Corp.
  - American Sign & Indicator Finance Corp.
  - Computer Graphics, Inc.
- Cargo, Inc.
- Intermodal Brokerage Services, Inc.
- Interstate Transport Systems, Inc.
- J. C. Holding Corp.
- National Piggyback Services, Inc.
- Rail Finance Corp.

Amoskeag Co.
- Amoskeag Management Corp.
- Bangor and Aroostook Railroad Company
  - Bangor Investment Company
  - Van Buren Bridge Company
- Fieldcrest Mills, Inc.
- Moore's Falls Corp.
- Westville Homes Corp.

Guilford Transportation Industries, Inc.
- Boston and Maine Corporation
  - Springfield Terminal Co.
  - BMX, Inc.
  - Northern Railroad Company
  - Vermont & Massachusetts Railroad Company

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* In addition to the companies listed, BRAE Corporation has several other subsidiaries, each of which has the name BRAE in its corporate name.

Delaware & Hudson Railway Company
The Napierville Junction Railway Company
Saratoga & Schenectady Railroad Company
Albany & Vermont Railroad Company
Maine Central Railroad Company
Portland Terminal Co.

Bessemer and Lake Erie Railroad Company
United States Steel Corporation
Elgin, Joliet and Eastern Railway Company
Duluth, Missabe and
Iron Range Railway Company
Union Railroad Company
McKeesport Connecting Railroad Company
The Newburgh and
South Shore Railway Company
The Lake Terminal Railroad Company
The Pittsburgh & Conneaut Dock Company
Birmingham Southern Railroad Company

Elgin, Joliet and Eastern Railway Company
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Bessemer and Lake Erie Railroad Company
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Iron Range Railway Company
Union Railroad Company
McKeesport Connecting Railroad Company
The Newburgh and
South Shore Railway Company
The Lake Terminal Railroad Company
The Pittsburgh & Conneaut Dock Company
Birmingham Southern Railroad Company

The Pittsburgh and Lake Erie Railroad Company
Beloit Corporation
Montour Railroad Company
Youngstown and Southern Railway Company
Lake Erie and Eastern Railroad Company
The Mahoning State Line Railroad Company

The Monogahela Railway Company
The Pittsburgh, Chartiers and
Younghiogheny Railway Company
P&LE Car Management Company
P&LE Land Company
P&LE Coal Logistics Company
West Newton Coal Logistics Company
Colona River Services, Inc.
Station Square Hotel Associates, Inc.
Pocono Northeast

Weyerhaeuser Company
Camac Veneer, Inc.
Chehalis Western Railroad Co.
Columbia & Cowlitz Railway Co.
Combustion Power Co., Inc.
Curtis, Milbourn & Eastern Railroad Co.
DeQueen & Eastern Railroad Co.
Dixieline Lumber Co.
Dixieline Builders Fund Control Inc.
Fisher Lumber Co.
Golden Triangle Railroad
Great Northern Annuities
Green Arrow Motor Express Co.
Malibu Lumber & Hardware Co.
Mississippi & Skuna Valley Railroad Co.
Mountain Tree Farm Co.
North Pacific Paper Corp.
Northwest Hardwoods, Inc.
Oregon Aqua-Foods, Inc.
Oregon, California & Eastern Railroad Co.
Shemin Nurseries, Inc.
Texas, Oklahoma & Eastern Railroad Co.
Westwood Shipping Lines, Inc.
Weyerhaeuser Construction Co.
Weyerhaeuser Export, Inc.
Weyerhaeuser International, Inc.
The Capricorn Corp. (Philippines)

Cartonpack, S.A. (Greece)
Cargal Hellas E.P.E. (Greece)
de Bes' Insurance Ltd. (Bermuda)
Kennedy Bay Timber Sandinian Berhad (Malaysia)
Pacific Hardwoods, Sdn. Bhd. (Malaysia)
Silam Forest Products Sdn. Bhd. (Malaysia)
Seyfert International, S.A. (France)
Cartonneries du Forez (France)
Dropsy Carton S.N.C. (France)
Societe Nouvelle des Papeteries de La Haye Descartes S.A.R.L. (France)
Weyerhaeuser (Aust.) Pty. Ltd. (Australia)
Weyerhaeuser Canada Ltd. (Canada)
Weyerhaeuser GMBH (Germany)
Weyerhaeuser (Far East) Ltd. (Hong Kong)
Weyerhaeuser Italia, S.r.l. (Italy)
Weyerhaeuser, S.A. (Panama)
Weyerhaeuser (U.K.) Ltd. (United Kingdom)
Weyerhauser Overseas Finance Co.
Weyerhaeuser Real Estate Co.
The Babcock Co.
Centennial Homes, Inc.
Cornerstone Development Co.
Duma, Inc.
Par-West Financial
Pardee Construction Co.
Marmont Realty Co.
Pardee Construction Co. of Nevada
Weyerhaeuser Mortgage Co.
The Giddings Co.
The Giddings Mortgage Investment Co.
Westwood Associates
Westwood Escrow Co.
Westwood Insurance Agency
Westwood Insurance Agency of Arizona, Inc.

Weyerhaeuser Mortgage Co. of Arizona
Weyerhaeuser Mortgage Co. of Nevada
Weyerhaeuser Mortgage Co. of Texas
Weyerhaeuser Venture Co.
The Quadrant Corp.
Quill Corp.
Scarborough Corp.
Scarborough Constructors, Inc.
Trendmaker Homes, Inc.
Westmark Development Co.
Westminister Co.
Westwood Securities Co.
Weyerhaeuser Real Estate Co. of Nevada
Quadrant Development Limited (Canada)
Winchester Homes, Inc.
Weyerhaeuser Townsite Co.
Wight Industries, Inc.
Wight Nurseries, Inc.
Wight Nurseries of Oglethorpe County, Inc.

Atlantic and Western Railway Company
Atlantic and Western Financial Corporation

E. F. Hutton Credit Corporation
E. F. Hutton and Company Inc.

Central Vermont Railway, Inc.

Grand Trunk Western Railroad Company
Grand Trunk Corporation

Angelina & Neches River Railroad Co.
Champion International Corporation

Evans Products Company
NVF Incorporated
Sharon Steel Corporation

Illinois Central Gulf Railroad Company
Illinois Central Industries

Soo Line Railroad Company
Canadian Pacific Limited
Soo Line Company

Ford Motor Company
- American Road Equity Corporation
- The American Road Insurance Company
- American Road Services Company
- Cardinal Redevelopment Corporation
- Dearborn Capital Corporation
- Dearborn Marine, Inc.
- Detroit Downtown Development Corporation
- Environ, Inc.
- Eveleth Taconite Company
- Ford Aerospace & Communications Corporation
- Ford Aerospace Satellite Services Corporation
- Ford Asia-Pacific, Inc.
- Ford Auto Club, Inc.
- Ford Colorado Properties, Inc.
- Ford Communications, Inc.
- Ford Consumer Credit Company
- Ford Consumer Discount Company
- Ford Direct Markets, Incorporated
- Ford Electronics and Refrigeration Corporation
- Ford of Europe Incorporated
- Ford Export Corporation
- Ford Financial Services, Inc.
- Ford International Capital Corporation
- Ford International Finance Corporation
- Ford International Services Inc.
- Ford Leasing Development Company
- Ford Life Insurance Company
- Ford Microelectronics, Inc.
- Ford Motor Credit Company
- Ford Motor Credit Company International
- Ford Motor Credit Company of Iowa
- Ford Motor Dealership Facilities Company
- Ford Motor Land Development Corporation
- Ford Motor Properties, Inc.
- Ford Overseas Services Corporation
- Ford Products Company
- Fordson Coal Company

Ghia, Inc.
Greenfield Properties, Inc.
Humboldt Mining Company
Lincoln Motor Company, Inc.
Modular Concepts, Inc.
Parker Chemical Company
Parklane Insurance Company
Philco Finance Corporation
Predelivery Service Corporation
Renaissance Retail Shops, Inc.
Rouge Steel Company
Starnet Corporation
Sunglas Products, Inc.
The Dearborn Inn Company
3000 Schaefer Road Company
Vista Insurance Company
Vista Life Insurance Company
Vista Life Insurance Company of Texas
Ford Motor Argentina S.A.
Metalurgica Constitucion S.A.
Transax, S.A., Comercial, Industrial y Financiera
Plan Ovalo S.A. de Ahorro Para Fines Determinados
Ford Motor Company of Australia Limited
Ford Sales Company of Australia Limited
Ford Credit Australia Limited
Ford Credit Australia Wholesale Limited
Ford Motor Company (Austria) K.G.
Ford Credit Bank A.G. (Austria)
Ford Motor Company (Belgium) N.V.
Ford Tractor (Belgium) Limited
Ford Credit N.V.
Transcon Insurance Limited
Ford Brasil S.A.
Ford Industria e Comercio Ltda.
Distribuidora Ford de Titulos e Valores Mobiliarios Ltda.
Ford Distribuidora de Productos de Petroleo Ltda.
Ford Financiadora S.A. Credito, Financiamento e Inv.

Sao Francisco Maquinas e Ferramentas Ltda.
Bongotti S.A. Industria e Comercio de Radiadores
Ford Administracao e Consorcios Ltda.
Transglobal-Corretagem de Seguros Ltda.
Ford Motor Company Limited
Ford Property Company Limited
Ford Motor Credit Company Limited
Automotive Finance Limited
Ford Personal Import Export Ltd.
Ford Financial Trust Limited
Ford Motor Company of Canada, Limited
Ford Credit Canada Limited
Ford Glass Limited
Ensite Limited
Ford Electronics Manufacturing Corporation
Canadian Road Credit Company, Limited
Ford Motor de Colombia, S.A.
Ford Motor Company A/S
Ford Credit A/S
Ford Motor Company (Egypt) S.A.E.
Oy Ford Ab
Ford France S.A.
Credit Ford S.A.
Ford-Werke Aktiengesellschaft
Ford Credit Bank Aktiengesellschaft
Ford Versicherungs-Vermittlungs GabH
Ford Investitions-GmbH
Ford Investitions GmbH & Co oHG
Ford Versorgunge-und Unterstutzungseinrichtung GmbH
Saar-Industrie, GmbH
Ford Nederland B.V.
Ford (Canada) Netherlands B.V.
Ford Credit B.V.
Escorts Tractors Limited
Henry Ford & Son, Limited
Henry Ford and Son (Sales) Limited
Henry Ford & Son (Finance) Limited

Ford Italiana S.p.A.
Ford Credit S.p.A.
Ford Leasing S.p.A.
Ghia S.p.A.
Ford Motor Company (Japan) Ltd.
Ford Finance Company of Japan, Limited
Hokkai Ford Tractor Co., Ltd.
Ford Motor Company of Malaysia, Sdn. Bhd.
Associated Motor Industries Malaysia (AMIM)
Ford Motor Company S.A. de C.V.
Ford Motor Compania Comercial, S.A.
Ford Latin America, S.A. de C.V.
Ford Credit Overseas Finance N.V.
Ford Overseas Finance N.V.
Ford Motor Company of New Zealand Limited
Ford Motor Credit Company of New Zealand Limited
Ford Motor Norge A/S
Eik & Hausken A/S
Ford Motor Company del Peru
Ford Philippines Inc.
Ford Lusitana
Ford Motor Company Caribbean, Inc.
Ford Motor Company Private Limited
Ford Motor Company of South Africa (Proprietary) Ltd.
Ford Credit South Africa (Proprietary) Ltd.
Ford Espana S.A.
Ford Credit S.A.
Ford Leasing S.A.
Ford Motor Company Aktiebolag
Fords Vagnskadegaranti AB
Ford Credit A.B.
Ford Motor Company (Switzerland) S.A.
Ford Credit S.A.
Ford Lio Ho Motor Company Ltd.
Ford Enterprise Company Taiwan, Ltd.
Ford Motor Company (Thailand) Limited
Ford Uruguay S.A.

Ford Motor de Venezuela, S.A.
Productos Industriales, C.A.

Itel Rail Corporation
Itel Corporation
Green Bay and Western Railroad Company
Ahnapee and Western Railroad Co.
Hartford & Slocomb Railroad Co.
McCloud River Railroad Co.

International Paper Company
IP Timberlands, Limited